IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

WP(C).No. 7977 of 2007(Y)

PETITIONER:

SAM C.GEORGE, S/O.GEORGE ABRAHAM,
AGED 31, 27/598, CHAKKALAYIL HOUSE,
UNIVERSITY P.O., KALAMASSERY, KOCHI-22.

BY ADV. SRI.JOSEPH GEORGE

RESPONDENTS:

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1. **THE KALAMASSERY MUNICIPALITY,**
   KALAMASSERY P.O., REP. BY ITS SECRETARY.

2. **M.P.MOHAMMED, MANAKKATTU HOUSE,**
   KOCHI UNIVERSITY ROAD, KOCHI UNIVERSITY P.O.,
   KALAMASSERY, ERNAKULAM DISTRICT.

3. **STATE OF KERALA,**
   REP. BY THE SECRETARY (LOCAL ADMINISTRATION),
   THIRUVANANTHAPURAM.

4. **THE CHIEF ENVIRONMENTAL ENGINEER,**
   KERALA STATE POLLUTION CONTROL BOARD,
   GANDHI NAGAR, ERNAKULAM.

5. **THE CIRCLE INSPECTOR OF POLICE,**
   KALAMASSEY POLICE STATION, KALAMASSERY.

BY ADV. SRI.M.K.ABOOBACKER, SC for R1
SRI.C.VALSALAN for R2
SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V
SRI.M.K.CHANDRAMOHAN DAS for R4
BY SR.GOVT.PELADER SRI. K.J.MOHAMMED ANSAR for R3 & R5

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 7977 OF 2007 Y

Dated this the 11th June, 2007

JUDGMENT

Petitioner challenges Exts.P3, P4 and P5 and seeks a declaration that Section 440 of the Kerala Municipality Act does not confer any power on the first respondent for closure of the prayer hall of the petitioner and further seeks a direction to first respondent to remove the seal and permit the petitioner to open the prayer hall. Articles 25 and 28 of the Constitution of India are also called to play by seeking prayer No.(iv) to desist from taking any action curtailing rights under the said Articles.

2. Case of the petitioner, in brief, is that the petitioner is the Pastor of believers Church by name "The New Testament Pentacostal Church". It is stated that the Church is functioning in Building No.XXI/151 of Kalamassery Municipality for the last thirty years. The said building is used by the believers for conducting prayers for the last thirty years. It is also stated that at present, prayers are being offered during every Sunday

morning at 9 a.m. for three hours and on auspicious occasions, special prayer meetings are also being conducted. It is stated to be located in a commercial area and the second respondent is residing on the western side of the Prayer Hall. Petitioner refers to Ext.P2 which is an order passed by this Court in W.P.(C) No.22953/06. By Ext.P3 notice, the first respondent Municipality directed the petitioner to stop the use of mike and musical instruments during prayers. Again by Ext.P4, the petitioner was called upon to desist from using musical instruments during prayers. By Ext.P5, the petitioner was prohibited from conducting prayers and creating sound pollution.

3. It is pointed out by counsel for respondent Municipality that even Ext.P5 order was violated. It is also submitted by counsel for the Municipality that pursuant to the oral direction by this Court in the said Writ Petition to close down the prayer hall on account of sound pollution, the prayer hall came to be closed.

4. Counter Affidavits have been filed raising various contentions. A Reply Affidavit is also filed. I heard the learned counsel appearing on behalf of the petitioner, the first respondent Municipality and the second respondent, besides the learned Government Pleader also. Counsel for petitioner submits that petitioner will enclose the area and he will install air conditioners to prevent escapement of noise. Counsel for respondents 1 & 2 submits that unless stringent conditions are imposed on the petitioner, he should not be permitted to carry on prayers in the premises. They would point out that the petitioner has been intransigent in the matter of flouting the law, and the activities have created nuisance by way of sound pollution.

5. Counsel for the Municipality would submit that if the petitioner is prepared to file an Affidavit in a stamp paper to the effect that the prayers will be conducted in an enclosed room without creating any sound, and that sound amplifiers and musical instruments will not be used and with a further condition that in case there is any violation of these conditions,

action can be taken by the Municipality leading upto the closure of the prayer hall, the respondent Municipality has no objection in allowing the petitioner to conduct the prayer hall. Counsel for second respondent would submit that as far as the second respondent is concerned, if there is no sound pollution, there may not be any objection to the petitioner being permitted to conduct prayers on Sundays and on any other special occasions. He further submit that prayers shall not be conducted after 6 p.m.. In such circumstances, the Writ Petition is disposed of as follows:

If the petitioner files an Affidavit in appropriate stamp paper incorporating the following conditions, the petitioner will be permitted to carry out prayers in the premises in question:

Petitioner must undertake in the Affidavit that he will enclose the area where the prayers are to be offered and install air conditioning facility therein. Petitioner shall further undertake that he will not use any sound amplifying devices and musical instruments in the offering of the prayers. He will also

undertake in the Affidavit that prayers will not be offered any day between 7 p.m. And 8 a.m.. The petitioner shall give an undertaking in the Affidavit that the prayers will be offered only on Sundays and other auspicious days, after fulfilling all the other conditions. He will further undertake that if any of the conditions aforesaid is violated, it is open to the respondent Municipality to take appropriate action in accordance with law and leading even to the closure of the prayer hall. Upon filing the Affidavit as aforesaid, the key to the premises which admittedly has been taken from the petitioner by the first respondent will be handed over to the petitioner, so that the petitioner can in the first place take steps to comply with the terms of the Affidavit in the matter of enclosing the room and installing air conditioners.

K. M. JOSEPH, JUDGE

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